U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16259816

Date: FEB. 11, 2022

Motion on Administrative Appeals Office Decision

Form I-601, Application to Waive Inadmissibility Grounds

The Applicant has applied to adjust status to that of a lawful permanent resident and seeks a waiver of inadmissibility under section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h).

The Director of the San Bernardino, California Field Office denied the Form I-601, Application to Waive Inadmissibility Grounds (waiver application), concluding that the record did not establish that the Applicant's qualifying relative, his U.S. citizen daughter, would experience extreme hardship if the Applicant were denied the waiver. The Applicant appealed that decision, arguing that a rehabilitation waiver is available to him, and his qualifying relative would experience extreme hardship if he were to be removed from the United States. We dismissed the appeal. The matter is now before us on a combined motion to reopen and reconsider.

On motion, the Applicant submits additional evidence; contends that his daughter would experience extreme hardship if the waiver were denied; and maintains that he qualifies for a waiver based on rehabilitation. Upon review, we will dismiss the motion.

I. LAW

Section 212(a)(2)(A) of the Act provides that any foreign national convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude (CIMT) (other than a purely political offense), or an attempt or conspiracy to commit such a crime is inadmissible.

Individuals found inadmissible under section 212(a)(2)(A) of the Act for a crime involving moral turpitude may seek a discretionary waiver of inadmissibility under section 212(h) of the Act. Section 212(h)(l)(A) of the Act provides for a waiver where the activities occurred more than 15 years before the date of the application if admission to the United States would not be contrary to the national welfare, safety, or security of the United States, and the foreign national has been rehabilitated.

Individuals found inadmissible under section 212(a)(2)(A) of the Act may also seek a discretionary waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United

States citizen or lawful permanent resident spouse, parent, son, or daughter of the foreign national. Section 212(h)(1)(B) of the Act. A determination of whether the denial of admission will result in extreme hardship depends on the facts and circumstances of each case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citations omitted). We recognize that some degree of hardship to qualifying relatives is present in most cases; however, to be considered "extreme," the hardship must exceed that which is usual or expected. *See Matter of Pilch*, 21 I&N Dec. 627, 630-1 (BIA 1996) (finding that factors such as economic detriment, severing family and community ties, loss of current employment, and cultural readjustment were "common result of deportation" and did not alone constitute extreme hardship). In determining whether extreme hardship exists, individual hardship factors that may not rise to the level of extreme must also be considered in the aggregate. *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted). In these proceedings, it is the applicant's burden to establish by a preponderance of the evidence eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

To merit reopening or reconsideration, an applicant must meet the formal filing requirements (such as, for instance, submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), and show proper cause for granting the motion. 8 C.F.R. § 103.5(a)(1). A motion to reopen is based on factual grounds and must state the new facts to be provided in the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that we based our decision on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy and that the decision was incorrect based on the evidence in the record of proceeding at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit. A motion that does not meet all the requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

A. Extreme Hardship

The record shows that the Applicant was convicted in California for various offenses between 1992 and 2010. The Director found, and the Applicant does not dispute, that the Applicant's 1995 and 1998 convictions constituted CIMTs. Our previous decision, issued in September 2020, includes a fuller discussion of these convictions; the motion at hand does not require us to repeat that discussion here.

The issue on motion is whether the Applicant has demonstrated that his qualifying relative, his U.S. citizen daughter, would experience extreme hardship upon denial of the waiver. An applicant may show extreme hardship in two scenarios: 1) if the qualifying relative remains in the United States separated from the applicant and 2) if the qualifying relative relocates overseas with the applicant. *See* 9 *USCIS Policy Manual* B.4(B), https://www.uscis.gov/policymanual (providing, as guidance, the scenarios to consider in making extreme hardship determinations). In the present case, the Applicant's qualifying relative indicates that she will remain in the United States if the Applicant departs the United States. The Applicant must therefore establish that if he is denied admission, his qualifying relative would experience extreme hardship upon separation from the Applicant.

The Director concluded that the Applicant had not submitted evidence to corroborate assertions that the Applicant's daughter would suffer extreme hardship. On appeal, the Applicant argued that his daughter will suffer extreme hardship because he supports her emotionally and financially.

In our appellate decision, we acknowledged the Applicant's daughter's assertion that the Applicant supports her financially and emotionally, but determined that the Applicant had not corroborated these assertions or shown that the daughter's mother is unable to provide similar support. We also noted that the Applicant's daughter takes him to medical appointments relating to his treatment for "Fahr's disease, a genetic neurological disorder causing calcium buildup in parts of the brain that control movement." We concluded that the Applicant submitted "no evidence indicating whether the Applicant can seek medical treatment for his disease in Nigeria, which would alleviate the daughter's concerns about his condition while living Nigeria."

On motion, the Applicant disputes only one element of our prior extreme hardship determination, relating to his treatment for Fahr's disease. The Applicant submits a letter from a Nigerian physician, who states that the Applicant "will not be able to receive adequate medical support in Nigeria for Fahr's disease because he suffers from a rare illness for which there is no known support or treatment in Nigeria." The physician does not elaborate. (Materials in the record from the National Institutes of Health indicate that "there is [no] standard course of treatment. Treatment addresses symptoms on an individual basis.")

Because Fahr's disease is a neurological disorder, it is significant that the physician does not claim any expertise or training in neurology. Rather, the physician describes himself as "a resident doctor in Anesthesia." He indicates that he is "currently engaged in a Neuro-surgical post," but the record does not indicate that surgery is used to treat Fahr's disease, and the Applicant's own medical documentation in the record does not reflect such surgery or any recommendation for future surgery. The only documented treatment that the Applicant has received is "balance training" from a physical therapist. The record does not establish that the Applicant is currently receiving treatment in the United States that he would not be able to receive in Nigeria.

For the above reasons, we conclude that the new letter from the physician in Nigeria does not establish proper cause for reopening the proceeding. We will dismiss the motion to reopen.

B. Rehabilitation

When he filed the waiver application, the Applicant stated that his CIMT "offenses occurred well over 15 years ago," but he made no further reference to rehabilitation under section 212(h)(1)(A) of the Act. On appeal, he asserted that he is eligible for a rehabilitation waiver because the 1995 and 1998 convictions were for CIMTs committed over 15 years ago, and the Director's denial notice did not indicate any more recent CIMT convictions.

At issue here is an ambiguous reference to 2008 proceedings relating to a conviction under California Penal Code (CA PC) 484F(b) for forgery in a transaction involving an access card.

In our September 2020 decision dismissing the Applicant's appeal, we concluded that the Applicant was convicted of a CIMT in 2008, less than 15 years ago, and therefore is not yet eligible for the

rehabilitation waiver. On motion, the Applicant contends that he "submitted certified evidence from the [redacted] Superior Court of California to USCIS illustrating that he was never convicted in 2008 . . . or had a court case for such an offense."

In a July 2019 notice of intent to deny, the Director noted the following information from law enforcement records and asked the Applicant to submit court records to show the disposition of the case:

> ARRESTED OR RECEIVED 2008[redacted]
> . . . .
> COURT-MUNICIPAL COURT[redacted]
> . . . .
> CHARGE-484F B PC-FORGE NAME ACCESS CARD E
> CONVICTED-PROB/JAIL-003YR PROBATION-090DS JAIL-RESTN-IMP SEN SS
> -PROBATION REINSTATED PROB EXT[redacted]2011

The Applicant's response to that notice included printouts of [redacted] Superior Court records that referred to court proceedings in mid-2008, and to the extension of the Applicant's probation until [redacted] 2011 as noted above. But the printout does not show a new conviction or a new offense. Rather, the associated case number in the court records correlates to the Applicant's 1995 arrest for violating CA PC 484F(b), and the Beneficiary's arrest in [redacted] 2008 was based on a bench warrant (for violating the terms of his probation) rather than probable cause arising from a new offense. Taken together, the records indicate that the Applicant's probation from his 1995 conviction was reinstated and extended in 2008.

The record, therefore, does not document a CIMT conviction within the last 15 years. But the rehabilitation waiver requires more than the passage of time. The Applicant bears the burden to establish that (1) his admission to the United States would not be contrary to the national welfare, safety, or security of the United States, and (2) he has been rehabilitated.

In this instance, the record documents ongoing criminal behavior. Between 2009 and 2014, he was repeatedly arrested for driving under the influence of alcohol in violation of various provisions of California Vehicle Code 23152. Law enforcement records refer to a conviction for that offense in 2009, and two in 2010. He was also arrested in 2010 for possession of a controlled substance without a prescription in violation of California Business and Professions Code 4060. In 2015, he was arrested and charged with inflicting corporal injury on a spouse or cohabitant in violation of CA PC 273.5(a). The submitted court records also reflect several probation violations, such as the incident in 2008 which resulted in his arrest and reinstatement of his probation. While these offenses and infractions do not rise to the level of CIMT convictions, they nevertheless illustrate an ongoing pattern of harmful criminal conduct. These issues do not permit us to conclude that the Applicant has been rehabilitated. He has also not shown that his admission to the United States would not be contrary to the national welfare, safety, or security of the United States.

While we previously erred with respect to the date of the Applicant's most recent CIMT conviction, the Applicant has not shown that, on the larger issue of rehabilitation, our appellate decision was

incorrect based on the evidence of record at the time of that decision. Therefore, we will dismiss the motion to reconsider.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.